IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 116 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX BARODA

Versus

HORMASJI MANCHARJI VAID

Appearance:

1. INCOME TAX REFERENCE No. 116 of 1982

MR AKIL KURESHI with MR MANISH R BHATT for Petitioner No. 1

MR BHARAT J SHELAT for Petitioner No. 1

MR JP SHAH for Respondent No. 1

MR KA PUJ for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

The Income Tax Appellate Tribunal, Ahmedabad (hereinafter referred to as `the Tribunal') has referred

to this Court the following questions for decision, arising from the Tribunal's order dated 9.3.1981 in ITA No. 97/Ahd/1979 :-

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that the capital gains arising on account of transfer of house property at Nani Daman were not exigible to tax during the previous year relevant to the assessment year 1974-75 in question ?

2. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has been right in law in holding that since the registration was completed on 2.3.1974, the surplus arising on account of transfer of house property at Nani Daman cannot be brought to tax during the accounting period which ended on 26.10.1973 ?"

2. In the statement of case, the Tribunal has stated that in the accounting year relevant to assessment year 1974-75 in respect of which reference is made, the assessee sold the house in question for a total consideration of Rs.1,25,000/-. Initially a deed was executed on 3.8.68 but the same was not registered. Subsequently, another deed was executed on 13.10.73 and it was registered on 2.3.74. In the meantime the accounting year of the assessee (.i.e. Samvat Year 2029) ended on 26.10.73. The ITO in the course of assessment proceedings noted that capital gains tax would be payable on the said amount for the A.Y. 1974-75 in question. In appeal preferred by the assessee, the said order of the ITO was set aside by the Commissioner of Income-tax (Appeals). On further appeal, the Tribunal came to the conclusion that the amount in question was not assessable for the assessment year 1974-75. The Tribunal further found that previous year for this source of income was S.Y. 2029 which ended on 26.10.73. The Tribunal held that the ITO was wrong in proceeding on the basis that the registration of the document was effected on 13.10.73. The Tribunal has given a finding that the transfer took place when the registration of the deed was completed on 2.3.74 in the S.Y. 2030 for which the relevant assessment year concerned is 1975-76. Hence, capital gain did not arise during previous year ending on 26.10.1973 relating to assessment year 1974-75.

3. The facts that emerge on perusal of the record are :-

(i) The transaction in question was not of sale of ownership rights as such but transfer of lease hold rights in the property in question. A previous document dated 2.8.68 purporting to transfer only lease hold right was admitted to be of no value because the transaction was entered into without written consent of the owner of the building i.e. original lessor. Hence after obtaining the written consent of owner of the property i.e. original lessor, the lessee (the assessee) executed the above deed dated 13.10.73 transferring the lease hold rights in favour of the transferee.

(ii) The document in question was executed on 13.10.73 during the S.Y. 2029 ending on 26.10.1973. The finding given by the Tribunal is that the accounting year of the assessee was Samvat Year and the ITO had also dealt with the assessee for the assessment years 1968-69, 1974-75 and 1975-76 on the basis that previous year of the assessee was Samvat Year.

(iii) Thereafter, the document was presented before the Sub-Registrar of Documents at Daman on 5.1.1974 and registration was completed on 2.3.74. Thus the document was presented for registration and the registration was completed in Samvat Year 2030 for which the assessment year was 1975-76.

4. In view of the above undisputed facts, the question which clearly arises for consideration is whether the transfer in question was effected in the accounting year (S.Y. 2029) relevant to A.Y. 1974-75 i.e. on 13.10.73 when the document in question was executed or the transfer in question was effected in the accounting year (S.Y. 2030) relevant to A.Y. 1975-76 i.e. the year in which the document was presented for registration (5.1.74) and the registration of the document was completed (2.3.74).

5. Since there was a conflict of opinion expressed by this Court in Darbar Shivrajkumar vs. Commissioner of Gift Tax, 131 ITR 647 and in Arundhati Balkrishna vs. CIT, 138 ITR 245, by order dated 21.9.1995, the following question was referred to the Larger Bench :-

"When the transfer of immoveable property of the value exceeding Rs.100/- can be said to have been effected -

(a) on the date of execution of the documents; or

(b) on the date of presentation of the document for registration before the Sub-Registrar of Documents before whom the transferor admits its execution; or

(c) on the date on which the registration of the document is completed."

6. By opinion dated 15.6.2001, the Full Bench has held that the transfer of immoveable property of the value exceeding Rs.100/- can be said to have been effected on the date of execution of the document. In view of the said answer, the Full Bench did not consider it necessary to answer further questions.

7. In view of the above opinion of the Full Bench, we hold that the transfer in the instant case took place on 13.10.1973 when the lease deed was executed and, therefore, the capital gain arose during the previous year ended on 26.10.1973 relating to assessment year 1974-75. We accordingly answer both the questions in the negative i.e. in favour of the revenue and against the assessee.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-